

Message Text

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ORIGIN ARA-20

INFO OCT-01 ISO-00 L-03 SAB-01 SMI-01 SCI-06 SSO-00 RSC-01

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APPROVED BY ARA:AMBASSADOR BOWDLER
ARA/PAN:PFMORRIS
ARA/PAN:HLSTEIN
L/M/SCA:JBOYD (DRAFT)
L/ARA:DGANTZ (DRAFT)
-ARA:DGANTZ (DRAFT)

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FM SECSTATE WASHDC

TO AMEMBASSY PANAMA IMMEDIATE

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E.O. 11652:N/A

TAGS: AMGT, CFED, PN, US

SUBJECT: PROPOSED STRI - GOP CONTRACT

1. DEPARTMENT OFFICERS MET WITH OFFICIALS OF SMITHSONIAN INSTITUTION AUGUST 7 AND REVIEWED BACKGROUND AND CURRENT STATUS OF THE PROPOSED CONTRACT BETWEEN THE SMITHSONIAN TROPICAL RESEARCH INSTITUTE AND THE MINISTRY OF HEALTH OF THE GOVERNMENT OF PANAMA. THE UNDERSTANDING OF THE DEPARTMENT AND THE SMITHSONIAN AS TO CURRENT STATUS, BASED ON INFORMATION SUPPLIED BY THE EMBASSY, IS THAT NO FURTHER DEVELOPMENTS HAVE TAKEN PLACE SINCE JUNE 26 WHEN EMBASSY INFORMED STRI THAT THE PROPOSED CONTRACT SHOULD NOT BE SIGNED BECAUSE OF DEPARTMENT'S OBJECTIONS TO CERTAIN LANGUAGE CONTAINED THEREIN.

2. STRI, AS AN ENTITY OF THE SMITHSONIAN INSTITUTE, IS IN DEPARTMENT'S VIEW A U.S. GOVERNMENT ENTITY, STAFFED BY CIVIL SERVICE EMPLOYEES. CONSEQUENTLY, THE PROPOSED CONTRACT CONTAINING THE SO-CALLED "CALVO CLAUSE" IN PARAGRAPH

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TRACT CONTAINING THE SO-CALLED "CALVO CLAUSE" IN PARAGRAPH

6, IS WHOLLY INAPPROPRIATE FOR THE PURPOSE INTENDED, E.G., PREVENTING PRIVATE CITIZENS OR COMPANIES FROM SEEKING THE DIPLOMATIC PROTECTION OF THEIR GOVERNMENTS IN LIEU OF PURSUING LOCAL COURT REMEDIES.

3. DEPARTMENT WOULD PREFER THAT NO AGREEMENT BE DISCUSSED OR CONCLUDED AT THIS TIME AND THAT INFORMAL ARRANGEMENTS THAT HAVE EXISTED REGARDING STRI'S ACTIVITIES IN PANAMA CONTINUE. HOWEVER, THE FACT THAT THE GOVERNMENT OF PANAMA HAS PROMULGATED A LAW FOR THE PURPOSE OF AUTHORIZING THE CONTRACT BETWEEN STRI AND THE MINISTRY OF HEALTH, THE LANGUAGE OF WHICH IS UNACCEPTABLE FOR COVERAGE OF A U.S. GOVERNMENT AGENCY, PRESENTS A POTENTIAL PROBLEM IN U.S./GOP RELATIONS. EVEN IF NO CONTRACT IS SIGNED TO IMPLEMENT THE PANAMANIAN LAW, THE FACT THAT IT IS ON THE BOOKS IN ITS PRESENT FORM COULD HAVE SERIOUS RAMIFICATIONS IN THE EVENT OF SOME FUTURE INCIDENT INVOLVING STRI OR ITS PERSONNEL. MOREOVER, THE SMITHSONIAN PERCEIVES A PRESENT NEED FOR A MORE FORMAL BASIS FOR THEIR OPERATIONS AND THE PROBABILITY THAT THE FUTURE WILL BRING MORE SPECIFIC REQUIREMENTS FOR WHICH AN AGREEMENT WILL BE NECESSARY. ACCORDINGLY, THE DEPARTMENT FEELS THAT THE EMBASSY SHOULD INITIATE ACTION WITH A VIEW TO ACHIEVING AN ACCEPTABLE MODIFICATION OF THE EXISTING PROCLAMATION, OR OTHER MUTUALLY SATISFACTORY RESOLUTION.

4. DEPARTMENT BELIEVES THAT THE MATTER SHOULD BE RAISED ASAP AT THE APPROPRIATE LEVEL OF THE FOREIGN MINISTRY. EMBASSY SHOULD INDICATE THAT THE FACT OF ITS PROMULGATION AND THE IMPENDING SIGNATURE OF A CONTRACT HAD COME TO THE EMBASSY'S ATTENTION ONLY AFTER THE LAW HAD BEEN PASSED. SINCE STRI IS A U.S. GOVERNMENT ENTITY, AS EVIDENCED BY THE STATUS OF ITS EMPLOYEES AND OTHER FACTORS, WE BELIEVE THAT ONE PROVISION OF THE LAW IS BY NATURE INAPPROPRIATE. THAT PROVISION, IN OUR VIEW, APPEARS DESIGNED FOR SITUATION INVOLVING PRIVATE CITIZEN OR COMPANY AND GOP, NOT AGENCY OF OTHER GOVERNMENT SUCH AS STRI. THE EMBASSY SHOULD INVITE THE FOREIGN MINISTRY TO SUGGEST APPROACHES WHICH MIGHT BE TAKEN TO RECTIFY THE PROBLEM. FYI: OBVIOUS POSSIBILITIES INCLUDE MODIFICATION OF DECREE AND CONTRACT LIMITED OFFICIAL USE

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BY GOP TO ELIMINATE PROVISION, EXCHANGE OF NOTES CONFIRMING CONTRACT BETWEEN STRI AND MINISTRY. LATTER WOULD BE EXECUTIVE AGREEMENT REQUIRING CIRCULAR 175 PROCEDURES. GOP MAY BE ABLE TO SUGGEST OTHER ALTERNATIVES. END FYI.

5. DEPARTMENT HAS SUGGESTED TO THE SMITHSONIAN THAT STRI OFFICIALS MAKE NO CONTACTS OR OTHERWISE DISCUSS THE PROBLEM WITH ANY AREA OF THE GOP UNTIL THE EMBASSY HAS MADE ITS

INITIAL PRESENTATION, AND HAS PROMISED THAT PRESENTATION
WOULD BE MADE ASAP. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 12 AUG 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: izenbei0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE175733
Document Source: CORE
Document Unique ID: 00
Drafter: KDACKERMAN:ZC
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740220-1060
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740854/aaaabupx.tel
Line Count: 117
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: izenbei0
Review Comment: n/a
Review Content Flags:
Review Date: 18 SEP 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 SEP 2002 by boyleja>; APPROVED <21 FEB 2003 by izenbei0>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PROPOSED STRI - GOP CONTRACT
TAGS: AMGT, CFED, PN, US
To: PANAMA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005